IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Bail Appl..No. 6695 of 2007()

CRLMP.7001/2007 of J.M.F.C.,OTTAPPALAM
CRIME NO.45/2007 OF THE SHORNUR RAILWAY POLICE STATION

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: PETITIONER/ACCUSED

LALU JOSEPH, S/O.JOSEPH,
VELLIMUTTOM HOUSE, VELLIMUTTOM,
PATHUR, NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED
BY THE SUB INSPECTOR OF POLICE,
RAILWAY POLICE STATION, SHORNUR,
PALAKKAD DISTRICT-THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6695 of 2007

Dated this the 31st day of October 2007

O R D E R

Application for regular bail. The petitioner faces allegations in a crime registered inter alia under Section 353 I.P.C and Sections 141 and 145(b) of the Indian Railway Act. The crux of the allegations against the petitioner is that he under the influence of alcohol had entered the engine cabin of a train and had caused obstruction to the discharge of duties by the Loco Pilot, a railway employee. The petitioner was arrested on 14/10/2007. He continues in custody from that date.

2. It is submitted at the Bar that the final report has already been filed. The learned counsel for the petitioner makes a grievance that the learned Magistrate has not properly considered the application for bail. I find merit in that objection raised. Whether bail should be granted to the petitioner or not must be decided by the learned Magistrate first. Once that question is decided, then only comes the question of considering the adequacy or acceptability of the sureties. The impugned

order shows that the learned Magistrate had mixed up the consideration and has passed the impugned order. That procedure adopted is obviously incorrect. The learned Magistrates must first consider whether the applicant is entitled for bail. Subject to appropriate conditions, bail can be granted, if the Magistrate finds that the applicant is entitled for bail. Thereafter, considering the acceptability of the sureties must be taken up separately.

3. The learned counsel for the petitioner makes a further grievance that the sureties offered by him have been commended upon adversely without valid reasons. In paragraph 3 of the order, I find that the learned Magistrate has observed that “Upon verification of tax receipts produced by the sureties, this court noted glaring defects in the same giving doubt to the genuineness of the same”. Tax receipts which were allegedly produced before the learned Magistrate have been produced as Annexures A to C. I am unable to understand what defects the learned Magistrate had in mind because the order is not sufficiently speaking. I need only observe that the learned Magistrate must consider the acceptability of the sureties

anxiously. Affidavit of the sureties can be insisted wherever clarification is required.

4. The learned counsel for the petitioner prays, the learned Public Prosecutor does not oppose the said prayer and I am satisfied that regular bail can be granted to the petitioner subject to appropriate conditions.

5. In the result, this petition is allowed. The petitioner shall be released on bail on the following terms and conditions:

i) He shall execute a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007